IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION Nos 619 & 800 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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CHETAN SHANTILAL DOSHI

Versus

URVASHI CHETAN DOSHI

Appearance:

1. Civil Revision Application No. 619 of 2000

MR MB GANDHI for the petitioner

MR YS MANKAD for Respondent No. 1

2. Civil Revision Application No. 800 of 2000

MR Y.S.Mankad for the petitioner

MR M.B.Gandhi for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 9th/05/2002

CAV COMMON JUDGEMENT

1. Civil Revision Application No.619/2000 is field

by the the petitioner - husband challenging the order passed by the learned 2nd Joint Civil Judge (SD), Bhuj below Application Exh.5 in H.M.P.No.41/99 dated 24.4.2002 on several grounds and while considering the challenge, the High Court had issued rule, which was made returnable within six weeks and by way of interim relief, operation of the order was stayed. Civil Revision Application No.800/2000 is filed by the petitioner -wife for modification of the above order as according to her that the order of maintenance is required to be enhanced as prayed for in the application and as found from the order dated 28.8.2000 while considering the fact that in Civil Revision Application No.619/2000 the Court has already issued rule, the court has issued rule in Civil Revision Application No.800/2000 and ordered to hear the same alongwith Civil Revision Application No.619/2000, which is filed by the husband, wherein he has challenged the order passed by the learned trial Judge in respect of fixing the amount of maintenance granted in favour of wife and the said order was also challenged at the instance of the wife in Civil Revision Application No.800/2000 wherein according to her the order passed by the learned trial judge fixing the maintenance is required to be modified and she is entitled for enhancement of the maintenance.

2. Though rule was made returnable within six weeks and the court has stayed the impugned order, Revision Applications had remained pending and accordingly a request was made by Mr. Mankad for early date of hearing and accordingly this court has considered the submission made before me and fixed both the Revision Applications and accordingly after considering the submissions made before me, I am inclined to dispose of both the Revision Applications by a common order.

3. During hearing Mr.Mankad, appearing for the petitioner in Civil Revision Application No.800/2000 and while opposing the Revision Application filed by the respondent - husband being Civil Revision Application No.619/2000, has contended that the learned trial Judge though had granted interim application for maintenance under Sec.24 of the Hindu Marriage Act, had not properly considered the evidence on the point of income and the learned trial Judge has accordingly while deciding the Application partly allowed the same by granting interim maintenance at the rate of Rs.3500/-per month from the date of filing of the application and Rs.500/-towards the costs of defending the proceedings. Mr. Mankad has while arguing the matter taken me through the application filed by the wife wherein according to her she is

entitled for interim maintenance at the rate of Rs.12000/-- per month for her maintenance as well as claimed Rs.10,000/-- to meet the expenses of the proceedings. As found from the application being H.M.P.No.41/99,wherein the petition for restitution of conjugal right against the husband was filed and during the pendency of the said proceedings, she claimed interim maintenance. According to her, her husband is serving as a senior operator in Indian Farmers Fertilizers Co-operative Ltd (IFFCO) and he is getting a handsome salary of Rs.15,000/-- per month. It is her say that her husband is getting Rs.600/-- as over time pay per shift and the minor child Ria aged about 4 years to be maintained by her. It is also the case of the petitioner wife that she is serving in D.V. High School, at Anjar and getting Rs.4488/-- on hand after necessary deduction and she stays with her mother and brother in Bhuj and she is required to spent substantial amount by way of travelling to attend the service at Anjar and that she has no other independent income sufficient for her support as well as for maintenance of minor female child Ria and she has claimed that she may be awarded Rs.12000/-- for their maintenance and a sum of Rs.10,000/-- for the expenses of the proceedings. The application was supported with an affidavit of the petitioner Smt. Urvashi dated 5.11.99.

4. As found from the contentions raised by the opponent - husband in his written statement at Exh.15, he has denied the averments made by the petitioner wife. However, he has admitted that he is working in IFFCO, but he denied about his earning. He has also denied the allegation made by the wife that he is not maintaining the petitioner and their minor child. It is the case of the husband that the wife while working with D.V.High School, is getting salary of Rs.5500/-- and a further earning of Rs.4000/-- by way of tuition. The other averments made by the wife about joint ownership of the bungalow is denied and the said bungalow is not let out at a rent of Rs.5000/--. It is further found from his written statement that he has ill and old aged mother to look after and accordingly he has prayed that the application for interim maintenance be dismissed.

5. The learned trial Judge, after considering the case put forward by the parties and the affidavit of the wife at Exh.19 and considering the income by way of salary of the husband, has directed the husband to pay maintenance at the rate of Rs.3500/-- per month from the date of the application and Rs.500/-- towards the costs to defend the proceedings. The learned trial Judge has

accordingly by his judgment and order dated 24.4.2000 allowed the application partly in the above terms.

6. As observed earlier, the Revision Application being C.R.A.No.619/2000 is filed by the husband and as per order passed on 5.7.2000,the court has issued rule and stayed the order passed below application Exh.5 and thereafter the matter was listed before the court on 14.8.2000 and the Revision Application was adjourned to 29.8.2000 and as per order dated 29.8.2000 the Revision Application No.619/2000 was ordered to be notified alongwith C.R.A.No.800/2000. The said Revision Application was filed by the wife praying for enhancement of the amount of maintenance as highlighted in the petition and the said Revision Application was ordered to be heard with Revision Application filed earlier by the husband.

7. Mr.Gandhi learned advocate appearing on behalf of the husband while addressing this court has vehemently urged that as found from the case put forward by the husband, the learned trial Judge was not justified in allowing the application for interim maintenance by awarding Rs.3500/-- per month as according to him that even husband has to maintain his old ailing mother and further that the wife is serving in D.V. High School at Anjar and she is getting more than Rs.4000/-- per month. It is his contention that the wife is earning and she is in a position to maintain herself as well as the minor child and accordingly the application for maintenance was not maintainable. It is the case of the husband that she was also earning by way of private tuition and looking to the income of the wife,it cannot be said that she is not in a position to maintain herself and accordingly learned trial Judge was not right in awarding maintenance. It is his claim that the husband has already filed petition for divorce and the petition for restitution of conjugal rights filed by the wife is a counter blast to the divorce petition filed by the husband. It is the submission of Mr.Gandhi that the learned trial Judge while considering the income of the wife has not considered the income of the wife by way of private tuition and once the child is born out of wedlock, it is the liability of both and when the mother is able to maintain the child and the child is with the mother, the learned trial Judge ought not to have granted maintenance. Mr. Gandhi in support of his submission has placed reliance upon the decision in the matter of Padmja Sharma v. Ratan Lal Sharma,reportd in (2000) 4 SCC 266, wherein the Apex court has held that both are bound to contribute to the maintenance of their children

on the proportion of their income. As in the present case admittedly the applicant wife is serving and getting salary of Rs.4488/-- and according to the husband she had a private income by way of tuition,she is also required to contribute in proportion.

8. An affidavit in reply is filed by original applicant and as found from her affidavit that her minor daughter Ria is suffering from serious ailment and she is undergoing medical treatment and has been referred to Dr. Agarwal at Mumbai for detailed investigation and after the death of her father in the year 1996, the entire liability of maintenance is of her brother Narendra,who is an Estate Agent and his income has substantially decreased after the earthquake on 26.1.2001 and in he said earthquake her two uncles Shri Chotalal and Rameshchandra had expired and the residential premises and the shops have been totally destroyed and the families of her uncle had been shifted to her mother's residence. She has further denied the case put forward by the husband that she is getting salary as averred by the husband. She is getting HRA at the rate of seven and half percent and she was getting Rs.125/-as cash handling allowance at Anjar. However, at present she is only getting Rs.50/-- by way of cash handling allowance at Bhuj.As found from her affidavit regarding income of her husband, it is her case that he is getting Rs.39,200/-- by way of monthly salary as his basic salary is Rs.14,000/-- and over and above he is getting other allowances namely D.A., shift allowance, compensatory allowance, petrol allowance etc. and further her mother in law is also getting by way of pension a sum of Rs.2071/--.

9. In light of the submission made before me and on examining the order under challenge and the reply affidavit filed by the wife, it is true that while fixing the interim maintenance the learned trial Judge has considered the gross income of the husband as Rs.13,300/-- per month. It is further found that the husband has also obtained loan for which he is required to repay.The learned trial Judge has accordingly considering the claim of the wife for interim maintenance at the rate of Rs.12000/-- per month observed that same is excessive looking to the income of the husband and the applicant wife is also earning handsome amount of more than Rs.4000/-- per month and she is an educated lady and he fixed the amount of Rs.3500/-- per month as reasonable amount for her maintenance as well as for the maintenance

of minor girl Ria. In C.R.A.No.800/2000 filed by the wife, an affidavit in reply is filed by her husband Chetan and according to him she is getting basic salary of Rs.4600/-- plus other allowance which comes to Rs.7258/-- and over and above bonus of 30 days at the rate of basic plus D.A. and adding all these amounts, according to him, she is getting Rs.7800/-- per month and the said amount is sufficient for her maintenance as well as for the maintenance of minor Ria.

10. I have also discussed earlier in respect of the reply affidavit filed by Urvashi - original applicant, which was filed in reply to the affidavit of her husband. As per the decision of the Apex court in Padmja Sharma v. Ratan Lal Sharma, (Supra), it is an admitted fact that the husband and wife both are earning and as held by the Apex court both are bound to contribute to the maintenance of their children in proportion to their income and it is an admitted fact that the minor daughter Ria is staying with her mother. As found from the reply affidavit of Urvashi even her mother in law is getting pension approximately a sum of Rs.2071/-- per month. Minor Ria due to her ill health is required treatment and as found from the affidavit of Smt. Urvashi minor Ria is under medical treatment and was also referred to Dr.Agarwal at Mumbai for detailed investigation. Considering this background and considering the position and the status of the husband as he is serving as a senior operator with IFFCO and having a handsome salary, in my view the learned trial Judge has slightly committed error by arriving at the income of the husband and while fixing the interim alimony by awarding Rs.3500/-- per month. Minor Ria is with the mother for which the mother is taking care.She is also required to spend money for her education. Over and above, as found, minor Ria was also referred to Dr.Agarwal at Mumbai for investigation for which she is also required to spend money. The mother of Chetan is also getting pension about Rs.2000/per month. In light of the above, this court is of the view that ends of justice will meet if the interim alimony fixed by the learned trial Judge is enhanced to the extend of Rs.500/-- per month from the date of the application and accordingly while allowing Civil Revision Application No.800/2000,the order of the learned trial Judge is modified and it is held that the applicant wife is entitled for maintenance at the rate of Rs.4000/-- per month, instead of Rs.3500/-- per month as fixed by the learned trial Judge, from the date of the application and the amount of cost awarded in favour of the wife is maintained. The opponent husband is accordingly directed to deposit the arrears of maintenance,which is increased

by this court at the rate of Rs.500/-- per month within eight weeks from today and the wife is entitled to withdraw the said amount. The husband is also directed to deposit regularly the amount of maintenance at the rate of Rs.4000/-- per month as per the order passed by the learned trial Judge.

11. Accordingly Civil Revision Application No.619/2000 is dismissed and Rule is discharged. Interim relief stands vacated. Civil Revision Application No.800/2000 is partly allowed to the above extend and Rule is made absolute accordingly. However, there will be no order as to costs.

(D.K.Trivedi,J)

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